

David Bearden  
Analyst in Environmental Policy  
Congressional Research Service

Testimony  
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Committee on International Relations  
Subcommittee on Asia and the Pacific  
United States House of Representatives

Hearing on the United States Nuclear Legacy  
in the Marshall Islands: Consideration of Issues  
Relating to the Changed Circumstances Petition  
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Mr. Chairman, Members of the Committees, thank you for the opportunity to represent the Congressional Research Service (CRS) at today's hearing. I am speaking on behalf of a team of authors who contributed to a CRS report on this topic. This report was released in March of this year to examine the Marshall Islands' *Changed Circumstances Petition* for additional compensation from the United States for damages resulting from nuclear weapons tests in the 1940's and 1950's, and the viewpoint of the Bush Administration that further compensation is not warranted.

The CRS report examines several issues related to the personal injury, health care, and property damages claims in the Petition to Congress. These issues include estimated occurrence of radiation-related illnesses in the Marshall Islands; the methodology for determining the value of "lost use" of damaged properties; U.S. radiation protection standards that could be used to determine whether further cleanup is necessary; and the extent of radioactive fallout. My testimony today presents a summary of our report. A copy of the full report is submitted for the record.

According to U.S. government estimates, the United States has spent \$531 million in the Marshall Islands on various nuclear test-related compensation and assistance. This assistance includes health care, medical surveillance and environmental monitoring, cleanup of soil contaminated from radioactive fallout, and resettlement efforts. Congress provided about half of this amount in "*ex gratia*" payments, i.e., not compelled by legal right or formal agreement.

Enacted by Congress in 1986, the Compact of Free Association established the Marshall Islands as a "freely associated state," and created a Nuclear Claims Fund of \$150 million. This fund, and subsequent returns on its investment, were intended by the U.S. government to provide an adequate amount for a "full and final settlement" of compensation claims for damages from past nuclear

weapons tests. Section 177 of Article IX of the Compact established a Nuclear Claims Tribunal to adjudicate claims for compensation from this fund.

Section 177 also permits the Marshall Islands to request further compensation in addition to the original \$150 million under two conditions. Additional compensation may be sought if loss or damages to persons or property arose or were discovered that could not reasonably have been identified as of the effective date of the agreement; and if such injuries rendered the provisions of the Compact “manifestly inadequate.”

In September 2000, the Marshall Islands government submitted its Petition to Congress requesting additional compensation pursuant to Section 177 of the Compact. The Petition requests compensation for personal injury awards, property damages (including loss of land use, environmental restoration costs, and hardships suffered), health services infrastructure, a health care program, radiation exposure monitoring, and other programs.

As discussed in the CRS report, the Petition justifies its claims of “changed circumstances” primarily upon information that it presents as “new and additional” since the Compact’s enactment in 1986. This information includes Department of Energy records that were declassified in the early 1990s, which indicated more extensive radioactive fallout than previously known or disclosed, and more stringent U.S. radiation protection standards that the Petition says should be used to determine the degree to which additional environmental cleanup may be necessary. These standards were issued in 1997 and 1999 and have been applied within the United States in certain cases.

As a result of this and additional information, the Marshall Islands government argues that certain circumstances have changed. These changes include greater than expected health

consequences, higher costs of health care and environmental cleanup, and lower than expected investment returns from the Nuclear Claims Fund to pay compensation claims.

Furthermore, the Petition asserts that the Nuclear Claims Fund constituted a provisional “political settlement,” not a final determination based upon a conclusive scientific assessment of costs. The Petition contends that by enacting legislation to approve the Compact in 1986 Congress provided the authority to appropriate additional compensation should the need arise. In addition, legal counsel for the Marshall Islands maintains that U.S. courts left open the possibility that plaintiffs in the Marshall Islands could return to the courts if they did not receive adequate compensation from the Compact.

The Marshall Islands’ Petition includes claims of \$14 million for personal injury compensation, and \$949 million in compensation claims for property damages to Enewetak Atoll and Bikini Atoll. The amount for property damages includes \$522 million for loss of past and future use of the land. The Nuclear Claims Tribunal, established under the Compact, agreed that such compensation was warranted under Section 177 of the Compact. The Petition also includes requests for other compensation, including \$50 million for medical services infrastructure, and \$45 million annually over the next 50 years to fund a health care program for those exposed to radiation. Combined, the total request for further compensation in the Petition is nearly \$3.3 billion.

In January 2005, the Department of State released a report, dated November 2004, outlining the Bush Administration’s viewpoints on the legal and scientific basis of the Marshall Islands’ Petition. The Departments of Energy and Defense contributed to this report. It concludes that the Marshall Islands’ request does not qualify as changed circumstances within the meaning of the Compact. It also disputes some key scientific claims of the Petition regarding the geographical extent of

radioactive fallout and radiation dose estimates, as well as the Petition's claims that more stringent U.S. radiation protection standards warrant further cleanup in the Marshall Islands. Consequently, the Bush Administration denies that there are no legal or scientific bases for considering additional payments.

Regarding loss of land use, the State Department's report indicates that all losses and damages to property from past nuclear tests were knowable and estimable prior to the Compact's enactment in 1986. The Bush Administration argues that the loss of land use therefore could have been reasonably identified at the time of the Compact, and that the Petition's more recent loss estimates, in effect, do not represent a changed circumstance warranting further compensation.

The Administration's report further suggests that the radiological health care needs of the Marshall Islands, as requested in the Petition, are addressed in part through health sector grants of approximately \$16 million per year. Congress authorized these grants in amendments to the Compact in 2003. However, Marshall Islands officials argue that the Petition's requests were not a part of the bilateral negotiations to amend the Compact, and that the amendments were not intended to account for nuclear test compensation claims. They add that a large portion of the expenditures noted by the Administration supported U.S. government research into the effects of radiation on human beings and the environment. They argue that such research therefore benefitted U.S. interests as well, rather than directly benefitting communities affected by the nuclear testing.

The CRS report identified four possible policy options in considering whether to provide additional financial compensation to the Marshall Islands. These options include:

- Grant or reject the Changed Circumstances Petition's requests, in whole or in part, on the basis of the changed circumstances rationale;
- Continue congressional *ad hoc, ex gratia* payments through appropriations measures;
- Enact legislation that would provide for a "full and final settlement" of claims; or
- Through an amendment to the Compact of Free Association, allow federal courts to review the judgments of the Nuclear Claims Tribunal and to decide whether to order the United States to pay these awards, in whole or in part.

Mr. Chairman, Members of the Committees, I hope this brief overview of the CRS report will be helpful. We welcome your questions and comments, which will be answered by relevant experts on the team of CRS specialists here with me who contributed to the CRS report. Thank you.